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EXPRESS MAIL NO.: EL 984587786 US

DATE DEPOSITED: JULY 14, 2005

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Donald E. Weder)	Atty Dkt. No.	8403.968
)		
Serial No.: 10/674,247)	Examiner:	F. Palo
)		
Filed: September 26, 2003)	Art Unit:	3644
)		
Customer No.: 30589)	Confirmation No.:	3184

For: WRAPPER FOR FLORAL GROUPING FORMED OF CLOTH AND POLYMERIC FILM

Mail Stop - Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION PURSUANT TO 37 CFR § 1.181 TO WITHDRAW
HOLDING OF ABANDONMENT ON THE BASIS THAT
PROPER REPLY TO OUTSTANDING PTO REQUIREMENT
WAS MAILED-RETURN POSTCARD RECEIVED**

Sir:

1. Pursuant to 37 CFR § 1.181, this petition is submitted in response to the NOTICE OF ABANDONMENT mailed July 8, 2005. The subject NOTICE advises that this application was abandoned for Applicant's failure to timely file a proper reply to the Office Action mailed on November 29, 2004 within the statutory period of three months with the appropriate extensions from the mailing date of the Office Action, copy attached hereto as Exhibit A.

2. Applicant hereby petitions to withdraw the holding of abandonment in this case on the basis that the reply to the Office Action was filed on May 26, 2005, with a three month extension, making the due date of the Office Action May 29, 2005.

3. The undersigned Agent for Applicant states:

- (a) The Office Action was received.
- (b) The reply to the Office Action was filed within the six month period for reply with a request for a three month extension of time on May 26, 2005.

4. In support of this request for withdrawal of holding of abandonment, the following documentation filed in the PTO on May 26, 2005 is submitted hereto as Exhibits B, C, D, E, F, G, H, and I:

- (B) A copy of the Transmittal Form (1 page).
- (C) A copy of the Request for Extension of Time - 3 months (1 page).
- (D) A copy of the Fee Determination Record (1 page).
- (E) A copy of the Credit Card Payment Form (1 page).
- (F) A copy of the Amendment and Response (28 pages).
- (G) A copy of the informal Figs. 14 and 15 from parent 10/195,030 (1 sheet).

(I) Copy of the Returned Acknowledgment Postcard with the PTO stamped date of May 26, 2005 and a copy of Express Mail Receipt EV368015514US with the "Date-In" of 05/26/2005.

5. According to MPEP 503, "[a] postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon by the PTO." A copy of Applicant's itemized postcard supplied on May 26, 2005 shows the date of receipt. That date is May 26, 2005. Therefore, it serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon. Also as evidenced by the Express Mail Receipt No. EV3680155147US with the "Date-In" as 05/26/2005, the required response to the Office Action was submitted to the Patent Office in a timely manner.

7. The subject abandonment occurred through no fault of Applicant, and this PETITION and supporting documentation are being submitted to petition for reinstatement of the application in order to prevent undue harm.

8. The Commissioner is hereby authorized to charge the Petition Fee of \$130.00, as set forth in 37 CFR 1.17 (i), to Credit card as shown on the attached credit card information authorization form PTO-2038 attached hereto. However, since this abandonment occurred through no fault of Applicant, waiver of this fee requirement is requested, if possible.

9. Please charge the Credit card as shown on the attached credit card information authorization form PTO-2038 attached hereto for any fee deficiency or credit this account for any overpayment for this Petition.

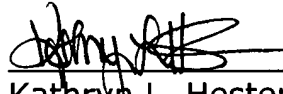
10. This PETITION and the enclosed documentation is being submitted by Express Mail Receipt No. EL 984587786 US.

11. Should anything further be required, please advise.

Respectfully submitted,

7-14-05

Date



Kathryn L. Hester, Ph.D., Reg. No. 46,768
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Agent for Applicant and Assignee

**EXHIBIT "A"****UNITED STATES PATENT AND TRADEMARK OFFICE**

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
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
APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,247	09/29/2003	DOCKETED	8403.968	3184
30589	7590	11/29/2004 <i>KLH</i>		
DUNLAP, CODDING & ROGERS P.C. PO BOX 16370 OKLAHOMA CITY, OK 73113			EXAMINER PALO, FRANCIS T	
<i>Response</i>			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 11/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

DUNLAP, CODDING
& ROGERS, P.C.

DEC 03 2004

Office Action Summary	Application No. 10/674,247	Applicant(s) WEDER, DONALD E.	
	Examiner Francis T. Palo	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Second Non-Final Office Action</u> |

DETAILED ACTION

Drawings

The drawings were received on 1/8/04. These drawings are accepted and approved except for the last sheet of Figures 13-15 and 17 which are different figures than the Formal Drawings with the same figure numbers.

Specification

The disclosure is objected to because of the following informalities:

Appropriate correction is required.

Paragraph [0001] should be updated to reflect the abandoned status of Application 10/195,030.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3644

Claims 8-16, 20-22, 25-27, 30-32, 42-53 and 59-64 are rejected

under 35 U.S.C. 102(b), as being anticipated by Weder 5,029,412.

Regarding **independent claims 8 and 42**:

Weder discloses a flower pot cover (read as: a decorative sleeve, capable of positioning about a floral grouping, as cited in the preamble,) may be constructed of a combination of polymer film and cloth (column-2, lines 51-57), as cited in the instant independent claims.

Weder further discloses the cover may be constructed of a single layer of material or a plurality of layers of the same or different types of materials (column-3, lines 17-19), and Weder further teaches lamination (column-3, line-23), (also read as; connected, as cited).

Regarding **independent claims 10 and 45**:

Weder teaches a laminated material capable of being formed into a decorative cover;
See the preceding discussion above.

Regarding **independent claims 13 and 49**:

Weder teaches a laminated material capable of being formed into a decorative cover;
See the preceding discussion above.

Weder further teaches heat sealing or adhesively connecting (column-2, lines 38-41), and a bonding material as cited, would be an inherent lamination process.

Art Unit: 3644

Regarding **independent claims 20-22, 59, 61 and 63**:

The laminate formed of a plurality of different types of materials as discussed above in the rejection of independent claims 8 and 42, is applicable to the three-layered sleeves cited in the instant independent claims.

Regarding **dependent claims 9, 11, 14, 43, 46 and 50**:

The discussions above regarding the independent claims are relied upon.

Weder teaches the cover may have any thickness (column-3, lines 19-21).

Regarding **dependent claims 25-27, 30-32, 44, 48, 53, 60, 62 and 64**:

The discussions above regarding the independent claims are relied upon.

Weder teaches decorative ornamentation to the cover (column-3, lines 53-66).

Regarding **dependent claims 12, 15, 47 and 51**:

The discussions above regarding the independent claims are relied upon.

Weder teaches polypropylene (column-3, lines 21-23).

Regarding **dependent claims 16 and 52**:

The discussions above regarding the independent claims are relied upon.

A four sided sheet of material having a bonding material disposed thereon as cited, would be inherent and encompassed by the plural layer constructions taught by Weder.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-7, 18, 19, 24, 29, 37-41 and 56-58 are rejected under 35 U.S.C. 103(a)
as being unpatentable over Weder (US 5,029,412) 1991,
in view of Celtorius (US Des. 419,436) 2000.

Regarding **independent claims 4, 18, 37 and 56:**

Weder discloses a flower pot cover (read as: a decorative sleeve, capable of positioning (wrapping) about a floral grouping, as cited in the preamble,) may be constructed of a combination of polymer film and cloth (column-2, lines 51-57), as cited in the instant independent claims.

Weder further discloses the cover may be constructed of a single layer of material or a plurality of layers of the same or different types of materials (column-3, lines 17-19), and Weder further teaches lamination (column-3, line-23), (also read as; connected, as cited).

Weder is silent as to a banding element as cited in the instant claims.

Celtorius teaches a banding element in combination with a flower bag.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have provided a banding element as taught by Celtorius and cited in the instant claims, to the cover of Weder, for the well-known advantages of that feature.

Regarding dependent claims 5 and 38:

The discussions above regarding the independent claims are relied upon.
Weder teaches the cover may have any thickness (column-3, lines 19-21).

Regarding dependent claims 6 and 39:

The discussions above regarding the independent claims are relied upon.
Weder teaches polypropylene (column-3, lines 21-23).

Regarding dependent claims 7, 19, 40 and 57:

The discussion above regarding the independent claims 4, 18, 37 and 56 is relied upon.
Celtorius teaches a ribbon as a banding element, as cited.

Regarding dependent claims 24, 29, 41 and 58:

The discussions above regarding the independent claims are relied upon.
Weder teaches decorative ornamentation to the cover (column-3, lines 53-66).

Claims 1-3, 17, 23, 28, 33-36, 54 and 55 are rejected under 35 U.S.C. 103(a), as being unpatentable over Weder and Celtorius as applied to claims 4, 18, 37 and 56 above, and further in view of Windisch (WO 93/15979) 1993.

Regarding **independent claims 1, 17, 33 and 54**:

The preceding discussion above is relied upon.

Weder as modified is not specific to a cinching tab having a bonding material disposed thereon and crimping as cited in the instant claims.

Windisch teaches a laminate construction for transporting flowers in combination with a functionally equivalent resealable adhesive tape (read as; a cinching tab) attached to the outer surface of the wrapper (see page-3 of the translation, second-to-last paragraph).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have further modified the cover of Weder to incorporate a resealable adhesive tape as taught by Windisch, and cited in the instant claims, as further such modification is merely an alternate equivalent holding means performing the same intended function of maintaining the cover about the floral grouping.

Regarding **dependent claims 2 and 34**:

The discussions above regarding the independent claims are relied upon.
Weder teaches the cover may have any thickness (column-3, lines 19-21).

Regarding **dependent claims 3 and 35**:

The discussions above regarding the independent claims are relied upon.
Weder teaches polypropylene (column-3, lines 21-23).

Regarding **dependent claims 23, 28, 36 and 55**:

The discussions above regarding the independent claims are relied upon.
Weder teaches decorative ornamentation to the cover (column-3, lines 53-66).

Terminal Disclaimer

The terminal disclaimer filed on 5/19/04 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patent No. 5,829,194 has been reviewed and is accepted.

The terminal disclaimer has been recorded.

Conclusion

Newly added claims 23-32 are acknowledged, and upon further reconsideration and search, a second non-final office action is made for the Applicant's consideration.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on M-Tu.,Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER



Francis T. Palo
Examiner
Art Unit 3644

Notice of References Cited

Application/Control No.

10/674,247

Applicant(s)/Patent Under
Reexamination
WEDER, DONALD E.

Examiner

Francis T. Palo

Art Unit

3644

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-5,029,412	07-1991	Weder et al.	47/72
	B	US-D419,436	01-2000	Celtorius et al.	D9/663
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N	WO93/15979	08-1993	International	Windisch	A47G 07/06
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
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